

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DURRELL ANTHONY PUCKETT,

Plaintiff,

v.

DAVID CATLIN, *et al.*,

Defendants.

Case No. 2:23-cv-0210-JDP (P)

ORDER; FINDINGS AND
RECOMMENDATIONS

Plaintiff, a state prisoner proceeding without counsel, brings this action alleging Eighth Amendment claims against defendants Kendall, Catlin, Simmons, Arnett, Rios, Katz, and Ericson. He also alleges that defendants Catlin and Kendall violated his rights under the Equal Protection Clause. Pending are plaintiff's two motions for summary judgment, ECF Nos. 50 & 63, and motion for default judgment, ECF No. 57. All of these motions should be denied. I will order the Clerk of Court to assign a district judge to rule on these recommendations.

The procedural history of this case is relevant. I issued an initial scheduling order in September 2023, indicating that discovery was to be completed by February 2024. ECF No. 23. After the case was scheduled, however, plaintiff moved to amend his complaint, ECF No. 29, and was granted leave to do so, ECF No. 33. My order granting leave to amend noted that a new scheduling order would be required because of the amendment. *Id.* at 3. Service on all

1 defendants was not accomplished until May 2024, ECF No. 47, and, as of yet, no new scheduling
2 order has issued. One will issue separately when these findings and recommendations are
3 submitted. The fact that no discovery has been conducted in this case, however, renders both of
4 plaintiff's motions for summary judgment premature. *See, e.g., Lewis v. Quinto*, No. 1:22-cv-
5 00628-NODJ-CDB (PC), 2024 U.S. Dist. LEXIS 26212, *5 (E.D. Cal. Feb. 12, 2024)
6 (recommending that pre-discovery motion for summary judgment be denied as premature).
7 Accordingly, I recommend they be denied without prejudice to renewal before the dispositive
8 motions deadline that shall be set by the new scheduling order.

9 And plaintiff's motion for default judgment, ECF No. 57, should also be denied.
10 Defendants have answered plaintiff's complaint, ECF Nos. 42 & 46, and there is no basis on
11 which to enter default judgment against them.


12 Accordingly, it is ORDERED that the Clerk of Court shall assign a district judge to this
13 action.

14 Further, it is RECOMMENDED that plaintiff's motions for summary judgment, ECF Nos.
15 50 & 63, be DENIED without prejudice to renewal and his motion for default judgment, ECF No.
16 57, be DENIED.

17 These findings and recommendations are submitted to the United States District Judge
18 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days of
19 service of these findings and recommendations, any party may file written objections with the
20 court and serve a copy on all parties. Any such document should be captioned "Objections to
21 Magistrate Judge's Findings and Recommendations," and any response shall be served and filed
22 within fourteen days of service of the objections. The parties are advised that failure to file
23 objections within the specified time may waive the right to appeal the District Court's order. *See*
24 *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir.
25 1991).

1
2 IT IS SO ORDERED.

3
4 Dated: February 27, 2025


JEREMY D. PETERSON
UNITED STATES MAGISTRATE JUDGE